IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WA.No. 695 of 2007(E)

AGAINST THE JUDGEMENT IN WPC.2630/2004 Dated 24/01/2007
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APPELLANT: R5

M.SAROJINI, RETIRED ASSISTANT EDUCATION
OFFICER, VRINDAVAN, CHATTUKAPARA,
KUDALI, KANNUR DISTRICT.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS: PETITIONER AND R1 TO R4 AND R6
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1. A.K.MALATHI, HINDI TEACHER,
KRISHNAVILASAM U.P.SCHOOL,
KAPPAD P.O., KANNUR-6.
2. GOVERNMENT OF KERALA, REPRESENTED BY
SECRETARY, GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
3. DISTRICT EDUCATIONAL OFFICER,
KANNUR.
4. ASSISTANT EDUCATIONAL OFFICER,
KANNUR NORTH, KANNUR.
5. MANAGER, KRISHNAVILASAM U.P.SCHOOL,
KAPPAD P.O., KANNUR-6.
6. THE ACCOUNTANT GENERAL, KERALA,
THIRUVANANTHAPURAM.

R2 BY GPVT PLEADER SRI BENNY GERVASIZ
R1 BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN K.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20/06/2007, ALONG WITH WA NO. 606 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal Nos. 695 and 606 of 2007

Dated: 20th June 2007

JUDGMENT

Radhakrishnan, J.

Both the appeals arise out of the judgment in W.P.C. No 2630 of 2004. Writ petition was preferred by the teacher seeking a writ of certiorari to quash the proceedings for recovery of any amount from her or from the fifth respondent on the ground that the appointment of the petitioner as Junior Hindi Teacher for the period from 04.06.1997 to 31.05.1998 is irregular. She has also sought for a declaration that her appointment from 04.06.1997 to 31.05.1998 is a valid appointment on the basis of Ext. P5 government order and the consequent approval of service during the period is valid.

2. Learned single judge did not go to the real dispute between

the teacher and the Assistant Educational Officer. Learned single judge directed the fourth respondent to permit the petitioner and the fifth respondent to share the loss sustained by the Government equally. Aggrieved by the said judgment teacher has filed W.A. No 606 of 2007 and the fifth respondent Assistant Educational Officer has filed W.A. No 695 of 2007. Ext. P8 is the order dated 20.12.2003 passed by the Assistant Educational Officer by which ultimately it was held that without starting additional division Hindi teacher was allowed to function. All the same it was held by the Assistant Educational Officer that contrary to the Ext. P5 government order Manager had allowed the teacher to continue, consequently approval was also granted by the Assistant Educational Officer. Since it was an irregular appointment approval granted was also illegal. Hence the amount drawn was sought to be recovered from the teacher and the Assistant Educational Officer. Government letter dated 8.10.2003 addrressed to the Assistant Educational Officer shows that the Deputy Director of Education has been directed to recover an amount of Rs 42,537/- from the petitioner. Amount was however recovered from the gratuity amount due to the Assistant Educational Officer. After that Ext. P8 order

dated 20.12.2003 was passed directing that the amount recovered from the teacher be paid over to the Assistant Educational Officer. Ext P8 order has therefore been challenged before by the teacher.

3. Considering the facts and circumstances of the case we feel it would be better that the entire issue be considered by a higher level officer in the rank of District Educational Officer. District Educational Officer, Kannur would examine the entire issue. If there is any possibility of recovering the amount from the Manager that can also be explored after hearing the Manager and other affected parties and take a decision in accordance with law. Since the amount has already been recovered from the Assistant Educational Officer and that the teacher has already retired from service it would be appropriate that the District Educational Officer passes final orders within three months from the date of receipt of a copy of this jugment. We make it clear, when the entire retiral benefits due to the teacher is released an amount of Rs 42,537/- be made as treasury deposit till the matter is finally disposed of by the District Educational Officer as directed above. We also make it clear we are not expressing any final opinion on the various points raised before

us. Judgment of the learned single judge is modified as above and the appeals are disposed of.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-

ANTONY DOMINIC
Judge

en/

[true copy]